sary in addition to that asked for in the notice of motion. Further, such an injunction as suggested by the company did not appear to me acceptable to the bank; it would indeed be a surprise if it was. I think the reason for this unusual stance taken by the company is this, and this again is a matter of inference, since no explanation has been furnished. There was also fixed for hearing before me at the same time as this motion, originating petition no 141 of 1987 filed by another shareholder of the company, namely, Jo Hui Teck ('JHT') who held 3,000,000 shares in the company. There was a similar dispute between JHT and the bank with regard to the 3,000,000 shares, and the bank also entered into an agreement for the sale thereof to the purchaser. JHT instituted proceedings against the company in originating petition no 141 of 1987 under s 216 of the Companies Act (Cap 50, 1985 Ed). On the filing of the petition, JHT also applied for and obtained an ex parte injunction restraining the company from passing the special resolution for the alteration of its articles of association and also an injunction restraining the company from registering the transfer of these shares. That dispute was subsequently settled, and at the hearing before me the parties asked for and I made an order, by consent, that the ex parte injunctions be discharged and leave to be granted for withdrawal of the petition with no order as to costs. It seems to me that if the ex parte injunction granted in this action is discharged and, as suggested by the company, an injunction restraining the registration of the transfer of the shares is granted, the company would be at liberty to pass the special resolution and proceed with the registration of the transfer of the 3,000,000 shares sold to the purchaser; the company would then be content to leave the transfer of the shares held up until the outcome of the trial. If this inference is correct, then this precisely is the position which the injunction in this case seeks to prevent. The plaintiff as a member of the company is entitled to have the benefit of the pre-emptive right under art 26 in respect of those 3,000,000 shares which were to be transferred to a person who is not a member of the company.

For all these reasons I have come to the conclusion that the interlocutory injunction ought to be granted and I made the order accordingly.

Order accordingly.

Solicitors: *ST Kay & Co*; *PK Wong & Co*; *Shook Lin & Bok*.

Reported by *PS Ranjan*

Foo Kee Boo & Anor v Ho Lee Investments (Pte) Ltd

HIGH COURT (SINGAPORE) – ORIGINATING SUMMONS NO 469 OF 1984
GRIMBERG JC
14 JULY 1988

Contract – Housing developers – Option in form prescribed by legislation – New option – Option form amended without approval of Controller of Housing – Breach of legislation – Consequences – Whether binding contract in existence – Housing Developers (Control and Licensing) Act (Cap 250, 1970 Ed), ss 4, 20 & 21 – Housing Developers Rules 1976, rr 10(B) & 20

Statutory Interpretation – Housing developers – Option in form prescribed by legislation – Option form amended without approval of Controller of Housing – Breach of legislation – Consequences – Intention of legislature – Housing Developers (Control and Licensing) Act (Cap 250, 1970 Ed) ss 4, 20 & 21 – Housing Developers Rules 1976, rr 10 20

Land Law – Conveyancing – Sale of house – Option in form prescribed by legislation – New option – Option form amended without approval of Controller of Housing – Sale and purchase agreement signed – Purchasers not proceeding with purchase – Forfeiture of moneys paid – Housing Developers (Control and Licensing) Act (Cap 250, 1970 Ed), ss 4, 20 & 21 – Housing Developers Rules 1976, rr 10(B) & 20

The plaintiffs obtained from the defendants an option to purchase a house in the defendants' development. The option was in Form D of the Schedule to the Housing Developers Rules 1976 ('the Rules') and the consideration for it was the sum of $72,400 paid as the booking fee and which was equivalent to 10% of the purchase price. In compliance with the terms of the option, the defendants' solicitors wrote to the plaintiffs enclosing, inter alia, the agreement for sale and asking the plaintiffs to return the agreement duly signed by the plaintiffs with a cheque for $72,400 which, together with the booking fee, amounted to 20% of the purchase price. By virtue of cl 2 of the option, the plaintiffs had three weeks from the date of delivery of the agreement to them, ie until 10 February 1984, to exercise the option by signing the agreement. By virtue of cl 3 of the option, the sum of $72,400 was payable upon execution of the agreement by the defendants. Clause 4 of the option provided, inter alia, that if the plaintiffs did not wish to exercise the option or allowed it to expire without exercising it, the defendants shall refund 90% of the booking fee if the purchase price was $200,000 or below or 95% of the booking fee if the purchase price was more than $200,000.

On 8 February 1984, ie two days before the option was due to expire, the plaintiffs' solicitors telexed the defendants' solicitors for an extension until 17 February 1984 to sign and return the agreement. The defendants' solicitors replied on 13 February 1984, ie three days after the option had expired, agreeing to extend the period to 17 February 1984.

On 17 February 1984, the plaintiffs' solicitors wrote to the defendants' solicitors enclosing the agreement duly signed by the plaintiffs. They enclosed also a cheque post-dated to 29 March 1984 for the sum of $72,400 which was to be paid under cl 3 of the option upon the agreement being signed by the defendants. The plaintiffs' solicitors stated that it had been mutually agreed between the plaintiffs and the defendants that the sum of $72,400 payable under cl 3 of the option would be

paid by a cheque post-dated to 29 March 1984. The defendants' solicitors acknowledged by letter the arrangement regarding the post-dated cheque. The agreement was signed by the defendants on 20 February 1985 and a copy of it was sent to the plaintiffs' solicitors.

By virtue of cl 3(1)(b) of the agreement, an instalment of $72,400 amounting to 10% of the purchase price was to be paid within 14 days of the receipt by the plaintiffs of the defendants' notice in writing that the foundation works of the property had been completed. A notice to that effect which was dated 21 February 1984 was given to the plaintiffs. The plaintiffs' solicitors by a letter dated 5 March 1984 asked for an extension of time of four weeks for payment of the instalment. The defendants' solicitors telexed a reply agreeing to the extension.

On 28 March 1984, a new firm of solicitors acting for the plaintiffs wrote to the defendants' solicitors stating the plaintiffs' intention not to proceed with the purchase, and asking for the return of the booking fee and the post-dated cheque for $72,400. They also returned the agreement to the defendants' solicitors asking for its cancellation. The defendants' solicitors wrote saying that the booking fee will be forfeited in view of the plaintiffs' decision not to proceed with the purchase and later wrote to the plaintiffs' solicitors saying that there had come into existence a binding agreement, by virtue of which the defendants were entitled not only to forfeit the booking fee but also the sum of $72,400 paid under cl 3 of the option and the instalment of $72,400 payable under cl 3(1)(b) of the agreement.

The plaintiffs commenced an action claiming:

(a) a declaration that no binding agreement existed, the plaintiffs not having validly exercised the option; and
(b) an order that the plaintiffs be at liberty to enter final judgment against the defendants for $65,160 interest and costs, the sum of $65,160 representing 90% of the booking fee which the plaintiffs claimed to be entitled to recover by virtue of cl 4 of the option.

The defendants presented for payment the post-dated cheque for the sum of $72,400 but it was dishonoured.

In their counterclaim, the defendants contended that they were entitled, inter alia, to the sum of $144,800, representing 20% of the purchase price and being the total of the booking fee and the sum payable pursuant to cl 3 of the option. The claim for the instalment of $72,400 under cl 3(1)(b) of the agreement was not pursued. Taking into account the sums received and a claim for interest, the defendants counterclaimed the sum of $75,561.87

At the trial, the plaintiffs contended that no binding agreement had come into being, the plaintiffs having failed to pay the sum of $72,400 under cl 3 of the option when they purported to exercise the option and/or the option having already expired when the defendants' solicitors agreed that its life would be extended by a period oif seven days. They also argued that in breach of r 10(B)(3) of the Rules the defendants, without the approval of the Controller of Housing, amended the option, first by purporting to extend it for seven days, and secondly by agreeing to accept payment of the instalment due under cl 3 by a cheque post-dated to 29 March 1984 when in fact (if the option had been validly extended) the payment should have been made on 20 February 1984.

Held, dismissing the claim and allowing the counterclaim: (1) The defendants had, in law, granted a fresh option by notifying the plaintiffs on 13 February 1984 that the option had been extended until 17 February 1984, which option was exercised by the plaintiffs within time.

(2) There came into existence, upon the plaintiffs signing and returning the agreement with the post-dated cheque, an enforceable contract.

(3) Although the new option fell foul of the prescribed form and a breach of the Rules had therefore been committed, liability to a penalty or imprisonment was the only consequence intended by the Housing Developers (Control and Licensing) Act and the Rules to follow from a breach of the Rules, and hence the new option was capable of acceptance and had been validly accepted.

Cases referred to

1 *Mahmoud* v *Ispahani* [1921] 2 KB 716 (folld)
2 *Archbolds (Freightage) Ltd* v *Spanglett Ltd* [1976] 1 QB 374 (folld)
3 *Yango Pastoral Co Pty Ltd & Ors* v *First Chicago Australia Ltd & Ors* (1977-78) 139 CLR 410 (folld)
4 *Phoenix General Insurance Co of Greece SA* v *Administratia Asigurarilor de Stat* [1986] 2 Lloyd's Rep 552 (folld)
5 *Mary-Ann Arrichiello* v *Tanglin Studio Pte Ltd* [1981] 2 MLJ 60 (folld)
6 *Vita Food Products Inc* v *Unus Shipping Co Ltd* [1939] AC 277 (refd)

Legislation referred to

Housing Developers (Control and Licensing) Act (Cap 250, 1970 Ed) ss 4, 20 & 21
Housing Developers Rules 1976 rr 10B & 20

Fazal Karim for the plaintiffs.
Shiriniwas Rai for the defendants.

Cur Adv Vult

Grimberg JC: The defendants are licensed property developers. In or about the beginning of 1984, they commenced the development of an estate in Yio Chu Kang, to be known as Sunrise Villa, which was to comprise a mix of semi-detached and terraced houses.

The defendants' licence was issued under the Housing Developers (Control and Licensing) Act (Cap 250, 1970 Ed) ('the Act'), which was in force at the material time. Section 21 of the Act empowered the minister to make rules, inter alia, to regulate the payments to be made by purchasers to developers, and to prescribe the forms to be used by housing developers in contracting with purchasers.

In exercise of the powers conferred on him by s 21, the Minister made rules called the Housing Developers Rules 1976 ('the Rules'). By the Schedule to the Rules, a form of option to purchase and forms of agreements for sale were prescribed. Rule 10(B) made the following provisions with regard to options:

> 10B(1) An option for the sale of any housing accommodation given by a housing developer shall be in the Form D set out in the Schedule to these Rules.
> (2) The option granted by the housing developer shall not be assignable or transferrable.
> (3) No amendment, deletion or alteration to the option referred to in paragraph (1) shall be made except with the approval in writing of the Controller.

Rule 20(1) of the Act was in the following terms:

> 20(1) Any person –
>
> (a) who refuses or neglects to comply with or acts in contravention of any of the provisions of these Rules; or
> (b) –; or
> (c) –
>
> shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

On 19 January 1984, the defendants granted the plaintiffs an option ('the option') to purchase a semi-detached house in their development. The option was precisely in the terms stipulated by Form D of the Schedule to the Rules. The consideration for the option was the payment to the defendants by the plaintiffs of $72,400 ('the booking fee') which was equivalent to 10% of the purchase price of the property. Clauses 1, 2, 3 and 4 of the option were in the following terms:

> 1. We shall make available for inspection and perusal by your solicitors Singapore, within two weeks from the date hereof the title deeds of the property or photostat copies thereof and the draft contract in duplicate in the prescribed form.
> 2. The option shall expire within three weeks from the date of the delivery to your solicitors of the title deeds or photostat copies thereof and the draft contract.
> 3. To exercise the option, you must sign the contract in the prescribed form. We shall thereupon sign the contract and 20% of the purchase price (less the booking fee) shall forthwith be paid by you to us.
> 4. If you do not wish to exercise the option or if you allow the option to expire without exercising it, we shall refund to you 95% of the booking fee if the purchase price is $200,000 and below and 90% of the booking fee if the purchase price is more than $200,000. You must thereupon return the title deeds or photostat copies thereof and the draft contract to us and neither party shall thereafter have any claim against the other.

The defendants' solicitors, in compliance with cl 1 of the option, wrote to the plaintiffs on 20 January 1984 enclosing an agreement for sale ('the agreement') in triplicate and copies of the title deeds. The agreement complied fully with the terms prescribed by Form B in the Schedule to the Rules. The defendants' solicitors requested the return of the agreement, duly signed by the plaintiffs, with a cheque for $72,400 which, together with the booking fee, amounted to 20% of the purchase price of the property. By virtue of cl 2 of the option, the plaintiffs had until 10 February 1984 to exercise the option by signing the agreement. Upon a true construction of cl 3 of the option, the $72,400 only became payable upon the execution of the agreement by the defendants.

On 8 February 1984, that is to say two days before the option was due to expire, the plaintiffs' solicitors telexed the defendants' solicitors stating that the plaintiffs were applying for a loan to be secured by a mortgage over the property, and requesting an extension of time until 17 February 1984 within which to sign and return the agreement.

The defendants' solicitors did not reply before the option expired but on 13 February 1984, three days after it had expired, they wrote to the plaintiffs' solicitors stating that their clients were prepared to allow the plaintiffs the extension of time which they had requested.

On the last day of the extended period of time, namely 17 February 1984, the plaintiffs' solicitors wrote to the defendants' solicitors returning the agreement duly signed by their clients, and stating that it had been mutually agreed between their clients and the defendants that the $72,400 which would become payable under cl 3 of the option when the agreement was signed by the defendants, would be paid by the plaintiffs by means of a cheque post-dated to 29 March 1984. A cheque so post-dated, for the required sum, was enclosed. The agreement and the cheque were acknowledged by the defendants' solicitors, who confirmed, by a letter dated 22 February 1984, that payment by means of a cheque post-dated to 29 March 1984 was acceptable to their clients. The agreement was signed by the defendants, and dated 20 February 1985, and a copy of it was sent to the plaintiffs' solicitors under cover of the defendants' solicitors' letter of 22 February 1985, to which I have just referred.

By virtue of cl 3(1)(b) of the agreement, an instalment amounting to 10% of the purchase price of the property ('the cl 3(1)(b) instalment') fell to be paid within 14 days of the receipt by the plaintiffs of the defendants' notice in writing that the foundation works of the property had been completed. Notice to this effect, dated 21 February 1984, was given to the plaintiffs, and the amount due under it was $72,400. The notice was acknowledged by the plaintiffs' solicitors who, by letter dated 5 March 1984, requested an extension of time of four weeks for payment of the cl 3(1)(b) instalment. The defendants' solicitors responded by telex of 8 March 1984 stating that their clients agreed to the request for an extension of time, but that if payment of the cl 3(1)(b) instalment was not received by 29 March 1984, the defendants reserved the right to charge interest from the date upon which payment of that instalment was originally due.

On 28 March 1984 a fresh firm of solicitors which had been consulted by the plaintiffs wrote to the defendants' solicitors in the following terms:

> We are now instructed by our clients to inform you that they are not proceeding with the purchase of the property.
>
> Kindly arrange to let us have the following on a basis of urgency:

(1) Our clients' post-dated cheque (post-dated 29 March 1984) for S$72,400.
(2) Your clients' cheque in our clients' favour for the refund of the booking fees.

As instructed, we also return herewith the agreement for sale and purchase dated 20 February 1984 for your cancellation.

Please acknowledge receipt and let us hear from you immediately by return post.

The defendants' solicitors responded by telex dated 17 April 1984 thus:

We are instructed by our clients that the sum of Singapore dollars 72,400 will be forfeited in view of your clients not proceeding with the purchase.

By a letter, dated 27 April 1984, the defendants' solicitors claimed that a binding agreement for sale had come into existence between their clients and the plaintiffs, by virtue of which the defendants were entitled, not only to forfeit the booking fee of $72,400, but to the payment of $72,400 under cl 3 of the option, and the cl 3(1)(b) instalment of $72,400.

In the event, the parties were unable to resolve the matter and the plaintiffs issued an Originating summons on 6 June 1984 claiming:

(1) a declaration that no binding agreement existed between themselves and the defendants, the plaintiffs not having validly exercised the option; and
(2) an order that the plaintiffs be at liberty to enter final judgment against the defendants for $65,160, interest and costs. That sum of $65,160 represented 90% of the booking fee, which the plaintiffs claimed to be entitled to recover by virtue of cl 4 of the option.

Following the institution of proceedings by the plaintiffs, the defendants presented the plaintiffs' cheque for $72,400 which had been post-dated to 29 March 1984 and tendered in satisfaction of the plaintiffs' obligation under cl 3 of the option, as varied by the parties and confirmed by their solicitors. The cheque was dishonoured. In the result the defendants claimed to be entitled to recover the sum of $75,561 from the plaintiffs, made up as follows:

Interest under cl 3(1)(a) of the agreement, on $72,400 from 20 February 1984 to 11 May 1984	$ 1,748.26
Interest under cl 3(1)(b) of the agreement, on $72,400 from 7 March 1984 to 11 May 1984	$ 1,413.61
20% of the purchase price under cl 3(3)(c) of the agreement	$144,800.00
	$147,961.87
Less the booking fee paid by plaintiffs to defendants	$ 72,400.00
	$ 75,561.87

The claim for the cl 3(1)(b) instalment of $72,400 was not pursued.

One affidavit was filed on behalf of the plaintiffs, and one on behalf of the defendants.

On 30 July 1984, the learned Chief Justice ordered that the proceedings be continued as if begun by writ, and that the affidavits do stand as pleadings. I was told by counsel at the trial that this order was made because it was then envisaged that there would be a dispute on the facts, resulting in the need to cross-examine the deponents of the affidavits. In the event, the facts had been agreed by the time the matter came before me, and it was therefore reasonable to expect that the only issue would be whether a binding agreement had come into being between the parties, having regard to the terms of the option, the plaintiffs:

(1) having failed to pay the sum of $72,400 under cl 3 of the option when they purported to exercise it; and/or
(2) the option having already expired when the defendants' solicitors agreed, on their clients' behalf, that its life would be extended by a period of seven days.

It transpired that those were not the only issues I was asked to determine. Counsel for the plaintiffs opened by asserting that, apart from those issues, the option was not in the terms prescribed by the Rules. The Rules, it was argued, stipulated that the life of an option was to be three weeks, and it could only be validly exercised during that period by (a) signing the agreement and (b) paying the instalment called for under cl 3 of the option. The defendants had, in breach of r 10(B)(3), without the approval of the Controller, amended the option first by purporting to extend it for seven days; and secondly by agreeing to accept payment of the instalment due under cl 3 by a cheque post-dated to 29 March 1984, when in fact payment should have been effected (if the option had been validly extended, which was not admitted) on 20 February 1984, the date on which the agreement was signed by the defendants. Thus, it was argued on the plaintiffs' behalf, they were entitled to refuse to comply with the terms of the agreement, notwithstanding having signed it, and to recover 90% of the booking fee by virtue of cl 4 of the option.

Counsel for the defendants stated that he had no objection to the plaintiffs raising a breach of the Rules as a ground for recovery. I reluctantly agreed to argument proceeding, despite the fact that the plaintiffs' new ground raised a number of issues which were neither defined in pleadings, nor adequately addressed in argument.

The option was open for acceptance on or before 10 February 1984. It is trite law that an option, which is a form of offer, is not exercisable beyond the period for which it is stipulated to be open. The life of the option in

this case had expired before the defendants purported to extend it. By notifying the plaintiffs on 13 February 1984 that the option had been extended until 17 February 1984, the defendants were, in law, granting the plaintiffs a fresh option ('the new option'), good for a period of seven days from 10 February 1984, but otherwise upon the same terms as the option. The new option was, in my judgment, exercised by the plaintiffs by their solicitors' letter dated 17 February 1984, the parties having agreed that the balance of $72,400 due under cl 3 would be payable by means of the cheque post-dated to 29 March 1984, and not on the signing of the agreement by the defendants.

As a matter of pure contract, therefore, there came into existence upon the plaintiffs signing and returning the agreement, with the post-dated cheque, an enforceable contract between the plaintiffs and the defendants.

The more important, and difficult, question is whether the contractual position was altered by the fact that the new option fell foul of the prescribed form by being of a duration of seven days instead of three weeks, and by the fact that the prescribed form was further varied by the defendants permitting the sum payable under cl 3 to be postponed.

There was, undoubtedly, a breach of the Rules. What was the effect of that breach?

As its name implies, and as its entire scheme renders apparent, the Act was directed at controlling the business of housing developers. It was not aimed at purchasers. In accordance with the scheme of the Act, s 21 conferred upon the Minister the power to make rules, and to prescribe forms 'that shall be used by a licensed housing developer, his agent or nominee and a purchaser, as a condition of the grant of a licence under this Act.' It follows, in my judgment, that just as the Act applied only to developers, so did the Rules. Thus, where (as occurred in the present case) an option was granted in a form not authorized by the Controller, in breach of r 10(B)(3), it was the defendants, the developers, who were in breach of the Rules, and not the plaintiffs, the purchasers. That conclusion is consonant with the object and scheme of the Act. I conclude that neither the Act, nor the Rules made under it, were designed to impose criminal sanctions against a purchaser who transacted with a developer upon the basis of forms which did not comply with those to be found in the Schedule to the Rules.

Where a contract is prohibited by statute, and that prohibition applies to all parties who purported to contract in breach of the prohibition, it is clear that the resultant agreement is null and void. Thus, in *Mahmoud* v *Ispahani*,[1] both buying and selling certain goods were prohibited otherwise than under licence. A contract was concluded without a licence, the seller being unaware of the requirement. The court held the contract to be void.

The position may be different where legislation imposes obligations or restrictions upon only one of the contracting parties. When that occurs it is necessary to examine the statute with a view to determining the intention of the legislature. Thus in *Mahmoud* v *Ispahani*[1] at p 731, Atkin LJ said:

> When the court has to deal with the question whether a particular contract or class of contract is prohibited by statutes, it may find an express prohibition in the statute, or it may have to infer the prohibition from the fact that the statute imposes a penalty upon the person entering into that class of contract. In the latter case one has to examine very carefully the penalty upon the individual. One may find that the statute imposes a penalty upon an individual, and yet does not prohibit the contract if it is made with a party who is innocent of the offence which is created by the statute.

In *Archbolds (Freightage) Ltd* v *S Spanglett Ltd*,[2] Devlin LJ said at p 390:

> On the other hand, it does not follow that because it is an offence for one party to enter into a contract, the contract itself is void ...

He went on to say of the principles of interpretation to be implied:

> Fundamentally they are the same as those that arise on the construction of every statute; one must have regard to the language used and to the scope and purpose of the statute. I think that the purpose of this statute is sufficiently served by the penalties prescribed for the offender; the avoidance of the contract would cause grave inconvenience and injury to innocent members of the public without furthering the object of the statute.

Similar statements are to be found in more recent cases. The law of illegality was considered in depth by the High Court of Australia in *Yango Pastoral Co Pty Ltd* v *First Chicago Australia Ltd*.[3] At p 413 Gibbs ACJ said:

> It is often said that a contract expressly or impliedly prohibited by a statute is void and unenforceable. That statement is true as a general rule, but for complete accuracy it needs qualification, because it is possible for a statute in terms to prohibit a contract and yet to provide, expressly or impliedly, that the contract will be valid and enforceable. However, cases are likely to be rare in which a statute prohibits a contract but nevertheless reveals an intention that it shall be valid and enforceable, and in most cases it is sufficient to say, as has been said in many cases of authority, that the test is whether the contract is prohibited by the statute.
>
> Where a statute imposes a penalty upon the making or performance of a contract, it is a question of construction whether the statute intends to prohibit the contract in this sense, that is, to render it void and unenforceable, or whether it intends only that the penalty for which it provides shall be inflicted if the contract is made or performed.

And at p 423 Mason J said:

> The principle that a contract the making of which is expressly or impliedly prohibited by statute is illegal and void is one of long standing but it has always been recognized that the principle is necessarily subject to any contrary intention manifested by the statute. It is perhaps more accurate to say that the question whether a contract prohibited by statute is

void is, like the associated question whether the statute prohibits the contract, a question of statutory construction and that the principle to which I have referred does no more than enunciate the ordinary rule which will be applied when the statute itself is silent upon the question. Primarily, then, it is a matter of construing the statute and in construing the statute the court will have regard not only to its language, which may or may not touch upon the question, but also to the scope and purpose of the statute from which inferences may be drawn as to the legislative intention regarding the extent and the effect of the prohibition which the statute contains.

In the recent case of *Phoenix General Insurance Co of Greece SA* v *Administratia Asigurarilor de Stat*,[4] a preliminary issue of illegality fell for decision. Kerr LJ summarized the law as follows (at p 570):

(i) Where a statute prohibits both parties from concluding or performing a contract when both or either of them have no authority to do so, the contract is impliedly prohibited: see *Mahmoud* v *Ispahani* [1921] 2 KB 716 and its analysis by Pearce LJ in *Archbolds* [1961] 1 QB 374 with which Devlin LJ agreed.

(ii) But where a statute merely prohibits one party from entering into a contract without authority, and/or imposes a penalty upon him if he does so (ie a unilateral prohibition) it does not follow that the contract itself is impliedly prohibited so as to render it illegal and void. Whether or not the statute has this effect depends upon considerations of public policy in the light of the mischief which the statute is designed to prevent, its language, scope and purpose, the consequences for the innocent party, and any other relevant considerations.

I turn to apply the principles set out above to the facts of the present case. The rule as to the form of options was imposed as a condition of the granting to the defendants of their licence – see s 21(ii)(d) of the Act. Breach of the rule could have been serious or trivial. It could have resulted in a fine of up to $5,000 and/or six months imprisonment – r 20 or, if charged as a breach of licence, to a fine not exceeding $20,000 – s 4(8) of the Act. I take the view that liability to penalty or imprisonment was the only consequence intended by the Act and the Rules to flow from a breach of the Rules. To hold that any breach, however trivial, rendered the contract void could lead to absurdity. Were this the result it would have been open not only to the purchaser but also to the developer to invoke the invalidity of the contract. This cannot, in my view, have been the intention of the legislature.

I am fortified in this view by the fact that the Act does not provide expressly that an option, or an agreement that arises from it, is incapable of enforcement if a statutory offence is committed in that the prescribed forms have not been used. In *Mary-Ann Arrichiello* v *Tanglin Studio Pte Ltd*,[5] Chua J said, at p 63:

> The penalty for the breach of any condition of a housing developer's licence is provided for in s 4(8) of the Act. The Controller may revoke the licence for certain reasons (s 7). These sections provide fully and comprehensively the consequences of the breach by the housing developer. Nowhere does the Act nullify or avoid any contract. The Rules also provide for the consequences in the event of a breach (r 20). Rule 20(2) even provides punishment for an aider and abettor, but again there are no provisions nullifying the contract.

Lord Wright, in *Vita Food Products Inc* v *Unus Shipping Co Ltd*,[6] dealt with the essential considerations lying behind the court's decision to uphold a contract and said, at p 293, that '.... the rule by which contracts not expressly forbidden by statute or declared void are in proper cases nullified for disobedience to a statute is a rule of public policy only, and public policy understood in a wider sense may at times be better served by refusing to nullify a bargain save on serious and sufficient grounds.'

In my judgment, it is clear that the aims of the Act would not be promoted in this case if the new option, and the ensuing agreement, were to be invalidated by reason of the alteration in the form of the option prescribed by the Rules. The defendants had set out from the start to comply with the requirements of the Rules with regard to the form of the option. The new option came into existence as a consequence of the plaintiffs' request for an extension of time, as did the defendants' consent to the payment due under cl 3 being postponed. Nothing the defendants did was calculated to prejudice the plaintiffs, as purchasers. The purpose of the Act would have been more than sufficiently served by the penalties provided under it, and/or by the Rules, had the Controller chosen to invoke them.

I accordingly hold that the new option was capable of acceptance; that it was validly accepted and that the resulting agreement between the plaintiffs and defendants, which was in the terms prescribed by the Rules, constituted an enforceable contract between the parties, which contract the plaintiffs repudiated.

Accordingly, I dismiss the plaintiffs' claim, and I give judgment for the defendants for the sum of $75,561, as counterclaimed, with interest on $72,400 at the rate of 6% pa from the date of issue of the writ until judgment or payment. The plaintiffs must pay the costs of the originating summons, to be taxed.

Order accordingly.

Solicitors: *David See & Co*; *Hin Rai & Tan*.

Reported by *PS Ranjan*